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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DLNYDOCKET@BAKERBOTTS.COM

Office Action Summary

Application No.

09/830,790

Applicant(s)

YUAN, YILIAN

Examiner

Jeffrey D. Carlson

Art Unit

3622

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is responsive to the papers filed 12/5/07.

Claim Objections

Claim 23 is objected to because of the following informalities:

- Claim 23, "means for" should appear before each verb for clarity. As it stands now, the use of the single "means for:" (with a colon) makes it unclear whether any of the 2nd through 5th verbs are method steps or "means for" type structure.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- **Claims 21-23 cover subject matter incompatible with the statutory provisions of 35 U.S.C. 101** (i.e. a human as part of the system structure). MPEP at §2105. These apparatus claims attempt to claim structure in the form of living subject matter (i.e. the analyst) as elements of the apparatus which provide part of the "system" at least for the subjective steps of "means for selecting a model...means for selecting a functional form...means for fitting the model...means for calculating product performance." Applicant's specification and remarks both indicate that a human may be used for these

capabilities; computer capabilities for these same features aside, the claim scope still encompasses the human being.

3. **Additionally, Applicant's Claims 18-23 are further rejected under 35 U.S.C.**

101 as failing to satisfy the "concrete" criteria outlined in State Street. In particular, a review of Applicant's disclosure supports the assertion that the invention defined by the claims fails to produce a concrete result.

4. Concerning the issue of concreteness, Applicant's claim 18 recites, inter alia, the steps of identifying a market event, selecting a model for the relationship between a promotion and a product, detecting a lag structure, selecting a functional form, computing model parameters by fitting the model, and calculating product performance attributable to the promotion. System Claim 21 recites substantially similar limitations. These claim limitations are supported in the specification by discussion regarding Steps 210-270, 310-360, and 410-420.

5. Applicant states that all disclosed steps can be performed manually or using a computer. However, several of the steps in Applicant's lone explicitly disclosed embodiment require subjective decisions on the part of a human research analyst. For instance, the step of determining a market event ("Step 210") is described only in terms of manual identification (see Applicant's specification at p. 5, ¶. 19-20), corresponding to the step of identification of a market event recited in the claims. Such manual identification is highly subjective, as the outcome of this step (and consequently, all

steps afterward according to Figure 2) depends not only on the skill of the research analyst, but also on the investigative interest/goal and mood of this analyst.

6. Several other steps also require subjective decisions to be made and have no associated teaching of an algorithmic or computer implementation of such steps. These steps include Steps 230-270 as described and recited in the claims. For example, the step of selecting a model for the relationship ("Step 230") relies upon a research analyst to specify the initial model structure (Applicant's specification at p. 5, l. 30) with no suggestion on how to distinguish among "model fitting information," "reasonableness of coefficients," and "model robustness," subjective criteria in themselves. Although suggestion is made that multiple model forms should be tried by an analyst (effectively performing Applicant's entire method multiple times), such a limitation is neither reflected in the claims nor the Figures. Regardless of the inclusion of iterations, Applicant's method and results would vary significantly and depend on the subjective judgments of a research analyst at several steps of Applicant's method. If the iterations of the method are necessary for the claimed invention to be operative, then the pending Claims require amendment to positively recite this critical element. MPEP at §2172.01.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. **Claims 18-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.** Claims 18-23 fail to meet the concreteness criterion of utility set forth in State Street. Consequently, the Claims therefore contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.
9. The standard for enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation. Factors to be considered when determining a lack of enablement and whether necessary experimentation is undue include the breadth of the claims, the nature of the invention, the state of the prior art, the state of the prior art, the level of one of ordinary skill, the level of predictability in the art, the amount of direction provided by the inventor, the existence of working examples, and the quantity of experimentation needed to make or use the invention based on the content of the disclosure. MPEP at §2164.01(a). Upon a review of all of the above factors and the evidence as a whole, sufficient reason exists to support a rejection under the enablement requirement.
10. Although Applicant attempts to differentiate the claimed method from certain "trial-and-error" prior art methods (Applicant's specification at p. 9, ¶. 12-20), Applicant's method is inherently "trial-and-error" due to its reliance on Box-Jenkins transfer function methods and other iterative processes disclosed by Applicant. These iterations are either explicitly noted as relying upon the subjective participation of a research analyst

or the disclosure is silent with respect to an enabling description of a computer (or algorithmic) implementation of such steps. A detailed discussion of Steps 230-260 is included below.

11. As discussed above at Paragraph 21, the step of determining a relationship ("Step 230") relies upon the subjective input of a research analyst and implies the necessity of iterations without satisfactorily specifying the criteria upon which such iterations would rely beyond simply naming model fitting information, reasonable coefficients, and robustness. At least the claimed steps of detecting a lag structure, selecting a functional form, and fitting the model, evaluating the model ("Step 240," "Step 250," and "Step 260," respectively) similarly rely upon subjective human input and yield results that vary significantly depending on such input.

12. Step 240 includes several sub-steps, Steps 310-360, which are reflected in the claims. Applicant's sole disclosed embodiment of Step 240 relies upon the ARIMA model fitting approach pioneered by Box-Jenkins at (sub-) at Step 310. However, as highlighted by the prior art, the Box-Jenkins model requires iterations (Box 1975 at p. 70, Col. 2, ¶. 13 – p. 71, Col. 1, ¶. 4) and is dependent on several subjective decisions on the part of the researcher (Newbold, Paul, "The Principles of the Box-Jenkins Approach," Operational Research Quarterly, Jul 1975, Vol. 26, No. 2, Part 2, 397-412, herein "Newbold," at p. 397, ¶. 13-21), the outcomes of the approach varying greatly, including uninterpretable or undesirable results (Newbold at p. 398, ¶. 10-14, 25-32; p. 409, ¶. 19 – p. 410, ¶. 39). Thus, the flexibility provided by the Box-Jenkins Method leads to misuse even by those skilled in the art of time-series data analysis (Newbold at

p. 411, ¶. 27-33). Further, to the extent that Claims 18-23 read on Helmer et al.

(Helmer, Richard M. and Johny K. Johansson, "An Exposition of the Box-Jenkins Transfer Function Analysis With an Application to the Advertising-Sales Relationship," Journal of Marketing Research, May 1977, Vol. 14, 227-239, herein "Helmer"), discussed in detail starting at Paragraph 69, Applicant's claims lack enablement since many of the model choices are resolved "on fairly ambiguous bases" and are "a matter of art" (Helmer at p. 230, ¶. 36-50).

13. Therefore, the evidence of record as a whole supports the prima facie rejection of Claims 18-23 as failing to comply with the enablement requirement.

14. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

15. Claims 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 21 is unclear because it introduces the claim as one capable of identifying a market event whose occurrence will impact product performance, yet the claim does not appear to be capable of doing so – applicant's attempt to remove a capability from the claim body to the preamble clouds the issue rather than clarifies it.
- Claim 23 (like claim 20 previously) purports to further limit the step of applying a cross-correlation function, yet it also includes other steps such as applying

the fitted model, yet the base claim requires the model fitting in steps different from applying the cross-correlation function. Applicant should amend claim 23 as has been done with claim 20.

Claim Rejections - 35 USC § 102

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17. **Claims 18, 19, 21, 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Basara (Basara, Lisa Ruby, “The Impact of a Direct-To-Consumer Prescription Medication Advertising Campaign on New Prescription Volume,” Drug Information Journal, 1996, Vol. 30, 715-729).**

18. Regarding claims 18, 21, Basara teaches a method including steps of determining one or more market events (Basara at p. 719, Col. 1, l. 6 – Col. 2, l. 36 teaches mitigating circumstances and other criteria (no competitors), examining product performance and promotion data (the entire crux of Basara is to examine the data; further Basara teaches selection of a campaign to include a “testable” campaign that is free from a lack of data (taken to represent abnormal data). Further, Basara teaches that the economy and “other factors” can affect sales performance and these external events are accounted for by the introduction of a “noise” component [pg 721 col 2 lines

1-40]. Basara teaches determining a relationship ("an increase") between each of the one or more promotions and the product (Basara at p. 721, Col. 1, ¶. 14-46), systematically detecting a promotion lag structure between the one or more promotions and the product performance for the product (Basara at p. 721, Col. 1, ¶. 48 – p. 723, Col. 2, ¶. 6), selecting one or more functional forms to account for an impact of each of the one or more determined market events which may impact the product performance (Basara at p. 722, Col. 1, ¶. 36 – p. 723, Col. 1, ¶. 12), evaluating each of the selected functional forms to account for the one or more determined market events (Basara at p. 723, Col. 1, ¶. 13 – Col. 2, ¶. 6), and quantifying a relationship between the one or more promotions and the product performance for the product by taking into account the evaluated selected functional forms (Basara at p. 723, Col. 2, ¶. 9 – p. 725, Col. 1, ¶. 28; Table 2). The detection of lag is taken to represent application using a cross-correlation function that examines the relationship between the promotion and the product performance. Basara teaches the step of selecting a functional form to include plotting sales versus time (Basara at p. 718, ¶. 10-18) and selecting a functional form (Basara at p. 722, Col. 1, ¶. 36 – p. 723, Col. 1, ¶. 12). Basara's fitted model is taken to include computation of the model parameters in order to address the variables present, as claimed by applicant. The purpose of Basara is to measure the impact of promotion on sales and it is taken to be inherent that the calculated measurements be output to appropriate people for consideration.

19. Regarding claims 19, 22, Basara also discloses that the model/relationship between one or more promotions and product performance includes a quantified portion

and a residual portion, and evaluating the residual portion to detect auto-correlation (Basara at p. 721, Col. 2, ¶. 39 – p. 722, Col. 1, ¶. 34).

20. **Alternatively, Claims 18, 19, 21, 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Box 1975.** Although the specific examples described within Box 1975 relate to smog data and the consumer price index, Box 1975 states that the disclosed techniques also apply to investigating the possible effect of promotions, advertising campaigns, and price changes on the sale of a product (Box 1975 at p. 70, Col. 1, ¶. 30-32).
21. Box 1975 teaches all limitations recited in Applicant's Claim 18, including steps of determining one or more market events (Box 1975 at p. 70, Col. 1, ¶. 10-32; Figure A), determining a relationship between each of one or more promotions and a product (Box 1975 at p. 71, Col. 1, ¶. 32 – Col. 2, ¶. 2), detecting a promotion lag structure between one or more promotions and product performance (Box 1975 at p. 73, Col. 2, ¶. 4-18), selecting one or more functional forms to account for the impact of each of the one or more determined market events (Box 1975 at p. 71, Col. 2, ¶. 4 – p. 72, Col. 2, ¶. 35; p. 73, Col. 2, ¶. 19-45), evaluating each of the selected functional forms to account for the one or more determined market events (Box 1975 at p. 73, Col. 2, ¶. 19-45), and quantifying a relationship between the one or more promotions and product performance by taking into account the evaluated functional forms (Box 1975 at p. 73, Col. 2, ¶. 46 – p. 74, Col. 1, ¶. 15).

22. In applying Box 1975, the noise figure, N_{it} , represents the lagged relationship of promotions on product performance where those promotions are different from the market events represented by the intervention terms, ξ_{ij} . N_{it} , in effect, is a catchall function taking into account the impact on product performance of all factors other than the explicitly specified market events. As described in the reference, fitting the model can make it possible to evaluate the explanatory potential of the noise figure (and therefore the promotion impact) with respect to product performance (Box 1975 at p. 71, Col. 2, ¶. 32-36). Alternatively, the market event/intervention terms, ξ_{ij} , of Box 1975 can also include one or more promotions, such as several months of advertising expenditure for a single campaign (Box 1975 at p. 72, Col. 2, ¶. 32-36; see also Wichern at p. 332, ¶. 1-2) since the reference provides teaching that, generally, ξ_{ij} can be an exogenous time series (Box 1975 at p. 71, Col. 2, ¶. 25-26). Such an application would leave the noise term to account for market events or, as in Basara, the series of promotions could constitute the market event. Accordingly, the general model set forth by Box 1975 accommodates both interpretations of market events in relation to promotions: (1) a market event being separate from a studied promotion; or (2) a market event including at least one promotion. For an examples of interpretation (1), rejections based on Leone 1987 and Helmer are detailed beginning at Paragraphs 64 and 69, respectively. Box 1975's fitted model is taken to include computation of the model parameters in order to address the variables present, as claimed by applicant. The purpose of Box 1975 is to measure the impact of promotion on sales and it is taken to be inherent that the calculated measurements be output to appropriate people for consideration.

23. Regarding claims 19, 22, Box 1975 also anticipates the limitations, including a relationship between the one or more promotions and product performance including a quantified portion and a residual portion, and a step of evaluating the residual portion to detect auto-correlation (Box 1975 at p. 73, Col. 2, ¶. 10-16; p. 74, Col. 2, ¶. 16). The quantified and residual portions are inherently taught by the use of transfer function analysis in Box 1975.

24. In another alternative application of prior art, Claims 18, 19, 21, 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Leone 1987.

25. Leone 1987 discloses steps of determining one or more market events (Leone 1987 at p. 463, ¶. 5-8; p. 464, ¶. 1-21), determining a relationship between each of one or more promotions and a product (Leone 1987 at p. 465, ¶. 1-10), detecting a promotion lag structure between one or more promotions and product performance (Leone 1987 at p. 465, ¶. 11 – p. 466, ¶. 6), selecting one or more functional forms to account for the impact of each of the one or more determined market events (Leone 1987 at p. 466, ¶. 7 – p. 467, ¶. 3), evaluating each of the selected functional forms to account for the one or more determined market events (Leone 1987 at p. 467, ¶. 3-5; p. 472, ¶. 20-41), and quantifying a relationship between the one or more promotions and product performance by taking into account the evaluated functional forms (Leone 1987 at Table 1). Leone 1987's fitted model is taken to include computation of the model parameters in order to address the variables present, as claimed by applicant. The purpose of Leone 1987 is to measure the impact of promotion on sales and it is taken to

be inherent that the calculated measurements be output to appropriate people for consideration.

26. Regarding claims 19, 22, following from the use of the Box-Jenkins method, the relationship between the one or more promotions and product performance in Leone 1987 inherently includes a quantified portion and a residual portion (Leone 1987 at p. 465, ¶. 1-10), and Fig. 1 of Leone 1987 teaches a step of evaluating the residual portion to detect auto-correlation.

27. In yet another alternative, Claims 18-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Helmer.

28. Helmer teaches Applicant's method as recited in Claim 18, including determining one or more market events (Helmer at p. 230, Col. 1, ¶. 47 – Col. 2, ¶. 13), examining the determined one or more market events (Helmer at p. 233, Col. 2, ¶. 16-22), determining a relationship between each of the one or more promotions and the product (Helmer at Fig. 2 (1); p. 229, Col. 2, ¶. 8-14; p. 231, Col. 1, ¶. 3-19), systematically detecting a promotion lag structure between the one or more promotions and the product performance for the product (Helmer at Fig. 2(2)-(6); p. 229, Col. 2, ¶. 15 – p. 230, Col. 1, ¶. 46; p. 231, Col. 1, ¶. 21 – p. 233, Col. 2, ¶. 5), selecting one or more functional forms to account for any impact of each of the one or more determined market events which may impact product performance (Helmer at Fig. 2(7); p. 230, Col. 1, ¶. 47 – Col. 2, ¶. 13; p. 233, Col. 2, ¶. 7-32), evaluating each of the selected functional forms to account for the one or more determined market events (Helmer at Fig. 2(7); p.

230, Col. 1, ℓ . 47 – Col. 2, ℓ . 13; p. 233, Col. 2, ℓ . 33 – p. 234, Col. 1, ℓ . 24), and quantifying a relationship between the one or more promotions and product performance for the product by taking into account the evaluated selected functional forms (Helmer at Fig. 2(8); p. 230, Col. 2, ℓ . 13-19; p. 234, Col. 1, ℓ . 25 – Col. 2, ℓ . 14).

29. In contrast to the interpretation applied using Box 1975, N_t in Helmer is taken to represent the impact of one or more market events other than the promotions. As described in Helmer, the effects of situational and other unspecified factors are characterized as “noise” or “shocks.” N_t represents the composite effect of these factors. Situational and other unspecified factors in Helmer include all factors other than the impact of promotions on sales, which is modeled and quantified by Helmer’s Steps 1-6. Therefore, by separately characterizing the noise, the incremental impact of promotions on performance can be measured.

30. The “second diagnostic check” of Helmer further discloses checking for multicollinearity problems, by detecting cross-correlation between the independent variable and the residuals, which are themselves a function of the independent variable (Helmer at p. 234, Col. 2, ℓ . 29 – p. 235, Col. 1, ℓ . 5). Helmer also describes a relationship between the one or more promotions and product performance including a quantified portion and a residual portion, as well as evaluating the residual portion to detect auto-correlation (Helmer at p. 228, Col. 1, ℓ . 24 – Col. 2, ℓ . 23; p. 234, Col. 2, ℓ . 16-28), Helmer forecasting ability analysis teaches steps of evaluating and validating a quantified relationship (Helmer at p. 235, Col. 2, ℓ . 3-13; Table 7).

31. Helmer's fitted model is taken to include computation of the model parameters in order to address the variables present, as claimed by applicant. The purpose of Helmer is to measure the impact of promotion on sales and it is taken to be inherent that the calculated measurements be output to appropriate people for consideration.

32. With regard to Claims 19, 20, 22, 23, Helmer teaches fitting a univariate autoregressive model to each of the one or more promotions to determine one or more promotion residual series (Helmer at Fig. 2(2); p. 231, Col. 2, ¶. 4-14), regressing performance information for the product to determine a product residual (Helmer at Fig. 2(3)), transforming the product residual into a product residual series (Helmer at Fig. 2(4); p. 231, Col. 2, ¶. 43 – p. 232, Col. 1, ¶. 2), determining one or more cross-correlation functions between the one or more promotion residual series and the product residual series (Helmer at Fig. 2(5); p. 232, Col. 1, ¶. 4 – Col. 2, ¶. 5), plotting the one or more cross-correlation functions to detect any lagged effect from the one or more promotions corresponding to the one or more cross-correlation functions (Helmer at Fig. 4), and selecting one or more appropriate functional forms which best fits the plotted functions (Helmer at Fig. 2(6); Eqns. 14-15).

Claim Rejections - 35 USC § 103

33. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

34. **Claims 18-23 are alternately rejected under 35 U.S.C. 103(a) as being unpatentable over Basara in view of Helmer.**

35. The methods of Helmer and Basara can be combined to provide a model capable of more accurately identifying the effects of promotions on product performance by further specifying the effect of a market event. Regardless of whether a predetermined market event includes a promotion, the combination of methods taught by Helmer and Basara specifies a model including terms accounting for the impact of a promotion (or series of promotions) and terms accounting for the impact of a market event distinct from the previously mentioned promotion (or promotions). Generally, Helmer's techniques for identifying and modeling the impact of promotions are combined with Basara's intervention analysis approach for taking into account the effects of a discrete market event.

36. More specifically, the combination relies upon Helmer to teach the steps of determining a relationship between each of the one or more promotions and the product, and systematically detecting a promotion lag structure between the one or more promotions and the product performance for the product. Basara is relied upon to teach the steps of determining one or more market events, selecting one or more functional forms to account for an impact of each of the one or more determined market events which may impact the product performance, and evaluating each of the selected functional forms to account for the one or more determined market events. Helmer is also applied to teach the step of quantifying a relationship between the one or more

promotions and the product performance for the product by taking into account the evaluated selected functional forms. Relevant portions of Helmer and Basara with respect to each anticipated step correspond to those cited in the original rejections under 35 U.S.C. 102(b).

37. Instead of relying only upon Helmer's noise term, N_t , to account for unspecified factors including the effects of a market event (described at Paragraph 71, Basara's intervention analysis, (e.g. a term similar to $[\omega(B)B^b/\delta(B)]I_t$), is incorporated into Helmer's method to explicitly specify the effect of a predetermined market event, thereby improving the specification and explanatory/predictive power of Helmer's model.

38. With regard to the compatibility of the Helmer and Basara methods, it is noted that both are directed to time-series analysis involving Box Jenkins transfer function analysis for advertising data. Furthermore, intervention analysis is merely an extension of univariate transfer function analysis (Box 1975; Leone 1987 at p. 464, ℓ . 41). As such, intervention analysis is readily combinable with transfer function models. For instance, Hanssens (Hanssens, Dominique M., "Market Response, Competitive Behavior, and Time Series Analysis," Journal of Marketing Research, Nov 1980, Vol. 17, 470-85) provides univariate Box-Jenkins and intervention models to account for the potential effects of strikes when estimating the primary demand effects of marketing mix variables (Hanssens at p. 477, Col. 2, ℓ . 1-53; Table 2).

39. Having established the compatibility of the two methods, one of ordinary skill in the art at the time of Applicant's invention would look to combine the teachings of Helmer and Basara to provide a more fully specified model, where econometric model

specification is a fundamental factor in the explanatory and predictive effectiveness. In econometrics, models are typically misspecified because of omitted variables (Leone, Robert P., "Modeling Sales-Advertising Relationships: An Integrated Time Series-Econometric Approach," Journal of Marketing Research, Vol. 20, Aug 1983, 291-295, at p. 292, Col. 1, ¶. 32-35). Thus, it would have been obvious to one skilled in the art of time-series data analysis at the time of Applicant's invention to combine the methods of Helmer and Basara to enhance the specification of Helmer's model, thereby increasing the explanatory and predictive power of the model.

40. **Claims 20, 23 are alternately rejected under 35 U.S.C. 103(a) as being unpatentable over Leone 1987 in view of Hooley et al. (Hooley, G. J., N. Wilson, and P. Wigodsky, "Modeling the Effects of Advertising: Some Methodological Issues," Journal of the Market Research Society, Jan 1988, Vol. 30, Iss. 1, 45-58, herein "Hooley").** As noted previously, Leone 1987 teaches all limitations of base Claim 18. However, Leone 1987 does not explicitly describe the limitations recited in Claim 20.

41. Hooley remedies the deficiencies of Leone 1987 with respect to Claim 20. In particular, Hooley provides a method of systematically detecting a promotion lag structure including steps of fitting a univariate auto-regressive model to each of the one or more promotions to determine one or more promotion residual series (Hooley at p. 52, ¶. 24-27; Figure 1), regressing performance information for the product to determine a product residual and transforming the product residual into a product residual series

(Hooley at p. 52, ¶. 27-32; Figure 1), determining one or more cross-correlation functions between the one or more promotion residual series and the product residual series (Hooley at p. 52, ¶. 33-35), plotting the one or more cross-correlation functions to detect any lagged effect from the one or more promotions corresponding to the one or more cross-correlation functions (Hooley at Table 1), and selecting one or more appropriate functional forms which best fits the plotted functions (Hooley at p. 52, ¶. 35-42).

42. Generally, Hooley provides an illustration of how Box Jenkins methodology can be applied to identify and include the influence of variables other than advertising prior to econometric modeling (Hooley at Abstract). The ARIMA modeling and cross-correlation techniques described by Hooley advantageously provide a better model than the conventional econometric model (Hooley at p. 57, ¶. 1-16). Thus, motivated by the enhanced predictive and explanatory power of Hooley's approach, it would have been obvious to one skilled in the art at the time of Applicant's invention to modify Leone 1987's step of detecting promotion lag by applying Hooley's method.

43. **Claims 20, 23 are alternately rejected under 35 U.S.C. 103(a) as being unpatentable over Box 1975 in view of Haugh et al. (Haugh, Larry D. and G.E.P. Box, "Identification of Dynamic Regression (Distributed Lag) Models Connecting Two Time Series," Journal of the American Statistical Association, March 1977, Vol. 72, No. 357, 121-130, herein "Haugh").**

44. As described above at Paragraph 58, Box 1975 teaches all limitations of base Claim 18. However, Box 1975 does not explicitly disclose all limitations of Claim 20. Haugh remedies these deficiencies. Specifically, Haugh provides a method for systematically detecting a promotion lag structure including steps of fitting a univariate auto-regressive model to each of the one or more promotions to determine one or more promotion residual series (Haugh at p. 127, Col. 1, ¶. 7-9), regressing performance information for the product to determine a product residual and transforming the product residual into a product residual series (Haugh at p. 127, Col. 1, ¶. 1-4; p. 123, Col. 1, ¶. 45-52), determining one or more cross-correlation functions between the one or more promotion residual series and the product residual series (Haugh at p. 127, Col. 1, ¶. 11-13), plotting the one or more cross-correlation functions to detect any lagged effect from the one or more promotions corresponding to the one or more cross-correlation functions (Haugh at Figure A), and selecting one or more appropriate functional forms which best fits the plotted functions (Haugh at Eqn. 4.3). It is also noted that Haugh provides a brief comparison of the disclosed method with the cross-correlation method of the Box 1976 text cited by Applicant (Haugh at p. 129, Col. 2, ¶. 57 – p. 130, Col. 1, ¶. 10).

45. Generally, Haugh is directed to methods for identifying distributed lag models relating two time series intended to improve upon current identification methods (Haugh at Abstract; p. 129, Col. 2, ¶. 17-20). Thus, motivated to improve the detection of the lag structure described in Box 1975, one skilled in the art at the time of Applicant's invention

would have found it obvious to modify the step of systematically detecting promotion lag in Box 1975 by applying Haugh's cross-correlation method.

Response to Arguments

46. Applicant argues that the system (apparatus) claims do not include a human. However, applicant's specification and remarks both indicate that a human may be used for these capabilities; ignoring the issue of whether applicant's disclosure encompasses the idea that *all* claimed apparatus features can be completely done by computer without the need for a human, the present claim scope still encompasses the disclosed embodiments where the human being provides certain capabilities. Limiting the claims to method claim would obviate this rejection.

47. Applicant has moved the identification of a market event into the preamble of claim 21, however not only does this not solve the stated problem, the rejection set/sets forth *several* apparatus capabilities that are accomplished by a human (not simply the market event identification capability): "means...for identifying a marketing event...means for selecting a model...means for selecting a functional form...means for fitting the model...means for calculating product performance."

48. Applicant argues that the claims produce a useful, concrete and tangible result. Examiner has rejected the claims merely for concreteness. This is explained in detail above, but in summary the result is taken to be one which varies according to the analyst. Applicant's arguments regarding a weather forecast of 30% chance of rain are noted, but examiner is not challenging the accuracy of the claimed result, but rather its

precision, repeatability and reproducibility, i.e. its "concreteness". Examiner has removed some the of arguments directed towards the final output's accuracy.

49. Applicant has indeed amended the claims to positively require detecting a promotion lag structure; such was not previously a clearly and positively claimed limitation. However the prior art rejection previous given and herein repeated indeed addressed that language as it seemed fruitful to provide the examiner's opinion of such a concept. Applicant has made no mention of where that opinion is insufficient, but merely states broadly that the prior art does not show, teach or suggest the claimed elements in each of claims 18-23.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey D. Carlson whose telephone number is 571-272-6716. The examiner can normally be reached on Monday-Fridays; off alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571)272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey D. Carlson/
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